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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,654	02/01/2002	Carl K. Schaab	P/3763-4	4672
2352	7590	10/27/2003		EXAMINER
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			HO, THOMAS Y	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary

Application No.

10/062,654

Applicant(s)

SCHAAB, CARL K.

Examiner

Thomas Y Ho

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*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 August 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-5 and 7-22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-5, 7-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stachowski USPN6227207 in view of Cronk USPN6244265.

As to claim 7, Stachowski discloses a product (see Figure 12) comprising at least one body 33, and a sheet material 34 on the at least one body 33. The difference between the claim and Stachowski is the claim recites a scented product, and a fragrance-containing microcapsule material adhered to the sheet material. Cronk discloses a body ornament having a body covered in sheet material similar to that of Stachowski. In addition, Cronk further teaches the product is scented, and a fragrance-containing microcapsule material 260 (see Figure 7) is adhered to the sheet material 230. It would have been obvious to one of ordinary skill in the art, having the disclosures of Stachowski and Cronk before him at the time the invention was made, to modify the sheet material of Stachowski to have a fragrance-containing microcapsule material adhered thereon, as in Cronk, to obtain a scented product. One would have been motivated to make such a combination because the ability to incorporate medication and/or cosmetic fragrance (abstract) would have been obtained, as taught by Cronk.

As to claim 1, Stachowski discloses said product is a bracelet comprising a bracelet body 33 (see Figure 12), said sheet material 34 covering the bracelet body 33. Cronk teaches said fragrance-containing microcapsule material 260 adhered to the sheet material 230.

As to claim 2, Stachowski discloses a bracelet 33 able to be worn on the arm of a wearer. Cronk teaches said microcapsule material 260 is adhered substantially only to an inside surface of said product adjacent to the skin of the wearer (see Figure 7). The limitation directed to the skin of the wearer holds little patentable weight because the use of the claimed invention, in this case on the skin of a wearer, does not further define the structure of the invention, only the intended use.

As to claim 3, Stachowski discloses said bracelet body 33 comprises an elastic material which permits the bracelet to be slapped onto one arm by a one-handed movement of the other arm (the hair clip of Stachowski can perform these claimed functional limitations).

As to claim 4, Stachowski discloses a bracelet 33 able to be worn on the arm of a wearer. Cronk teaches said microcapsule material 260 is adhered substantially only to an inside surface of said product adjacent to the skin of the wearer (see Figure 7). The limitation directed to the skin of the wearer holds little patentable weight because the use of the claimed invention, in this case on the skin of a wearer, does not further define the structure of the invention, only the intended use.

As to claim 5, Stachowski discloses a bracelet 33 able to be worn on the arm of a wearer. Cronk teaches said microcapsule material 260 is adhered substantially only to an outside surface (col.12, ln.53-56) away from the skin of the wearer. The limitation directed to the skin of the

wearer holds little patentable weight because the use of the claimed invention, in this case on the skin of a wearer, does not further define the structure of the invention, only the intended use.

As to claim 8, Stachowski discloses said at least one body includes a pair of bodies 110,124 connected together (see Figures 19a,19b). Cronk teaches said microcapsule material 260 being adhered to at least one of said bodies.

As to claim 9, Stachowski discloses at least one of said bodies 110,124 includes an elastic material which urges said body automatically into a spiral shape.

As to claim 10, Stachowski discloses each of said two bodies 110,124 includes an elastic material which urges said body automatically into a spiral shape.

As to claim 11, Stachowski discloses the other end of said two bodies 110,124 includes an elastic material 128 which stretches and contracts longitudinally.

As to claim 12, Stachowski discloses providing a product comprising a body 33, with a sheet material 34 covering said body. Cronk teaches applying a fluid 232/260 to said sheet material 230, said fluid containing microcapsules 260 which contain a fragrance.

As to claim 13, Stachowski discloses said product is a bracelet 33. This is intended use and holds little patentable weight. Defining the claimed invention as a bracelet does not further define the structure of the invention.

As to claim 14, Stachowski discloses a bracelet 33 able to be worn on an arm of a wearer. Cronk teaches said microcapsule material 260 is adhered substantially only to an inside surface of said product adjacent the skin of a wearer. The limitation directed to the skin of the wearer holds little patentable weight because the use of the claimed invention, in this case on the skin of a wearer, does not further define the structure of the invention, only the intended use.

As to claim 15, Stachowski discloses said bracelet 33 comprises an elastic material such that the bracelet can be slapped onto one arm by a one-handed movement of the other arm (the hair clip of Stachowski can perform these claimed functional limitations).

As to claim 16, Stachowski discloses a bracelet 33 able to be worn on the arm of a wearer. Cronk teaches said microcapsule material 260 is adhered substantially only to an inside surface of said product adjacent to the skin of the wearer. The limitation directed to the skin of the wearer holds little patentable weight because the use of the claimed invention, in this case on the skin of a wearer, does not further define the structure of the invention, only the intended use.

As to claim 17, Cronk teaches said fluid is applied by spraying (col.16, ln.64-67; col.17, ln.1-5).

As to claim 18, Stachowski discloses a bracelet 33 able to be worn on the arm of a wearer. Cronk teaches said microcapsule material 260 is adhered substantially only to an outside surface (col.12, ln.54-56) away from the skin of a wearer. The limitation directed to the skin of the wearer holds little patentable weight because the use of the claimed invention, in this case on the skin of a wearer, does not further define the structure of the invention, only the intended use.

As to claim 19, Stachowski discloses said sheet material 34 comprises a woven or non-woven fabric (col.7, ln.25-30). Stachowski discloses that sheet material 34 is made of cloth, and the commonly known definition of the word "cloth" is an artifact made by weaving or felting, therefore the term cloth inherently discloses a woven or non-woven fabric.

As to claim 20, Stachowski discloses said sheet material 34 comprises a woven or non-woven fabric (col.7, ln.25-30).

As to claim 21, Stachowski discloses said sheet material 34 comprises a woven or non-woven fabric (col.7, ln.25-30).

As to claim 22, Stachowski discloses said sheet material 34 comprises a woven or non-woven fabric (col.7, ln.25-30).

Response to Arguments

In response to applicant's argument that the Stachowski product is not a bracelet (pg.9), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). As to claims 1 and 13, although Stachowski does not explicitly discloses the use of the hair clip in Figure 12 as a bracelet, it is clear from the drawings and disclosure that this kind of use could be possible. Furthermore, the intended use as a bracelet does not structurally define over the apparatus of Stachowski. As further evidence that the intended use holds little weight, the examiner has included in the attached references cited an article dated 10/03/1990 teaching that an apparatus identical to the Stachowski apparatus can be worn on the wrist and on the hair, and is able to be slapped onto both.

As to claims 3 and 15, the arguments above also apply. Applicant asserts that the ability to be slapped onto an arm defines over the Stachowski reference. It is clear from the drawings and disclosure that Stachowski can also perform this function. Applicant is invited to point out

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the structural element of the claimed invention that differentiates the claimed invention from the Stachowski apparatus. Once again, applicant is directed to the article included in the attached references cited.

In response to applicant's arguments concerning the weight of functional limitations, the examiner agrees and retracts the statement that the functional limitations hold "no patentable weight". Functional limitations are taken into consideration, but in the claimed limitations, the functional limitations do not further define the structural elements, and so they hold little patentable weight. In addition, the apparatus of Stachowski is able to perform the functional limitations.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Harakas, Margo. Slap Happy. Sun Sentinel Newspaper, Fort Lauderdale, Oct.3, 1990. teaches that is has been old and well known to use slap bracelets on hair and on and arm.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-1113.

TYH



WILLIAM L. MILLER
PRIMARY EXAMINER